

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D. C. 20554

RECEIVED

MAR 16 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Application of

ELLIS THOMPSON CORPORATION

For facilities in the Domestic Public Cellular Radio  
Telecommunications Service on Frequency Block  
A in Market No. 134, Atlantic City, New Jersey.

CORRESPONDENCE  
FILE

CC Docket No. 94-136

DOCKET FILE COPY ORIGINAL

To: Honorable Joseph Chachkin  
Administrative Law Judge

OPPOSITION TO DOCUMENT PRODUCTION REQUEST

Telephone and Data Systems, Inc. (TDS) files herewith, by its attorneys, its Opposition to the Document Production request of Ellis Thompson Corporation (Thompson).

By letter of January 6, 1995, Thompson advised TDS of the documents which Thompson desires to have TDS produce in this proceeding. A copy of the request is attached. At the prehearing conference held on January 27, 1995, the Presiding Administrative Law Judge ordered the parties to which document production requests had been submitted either to produce the requested documents or to file their objections thereto by March 16, 1995.

The *Memorandum Opinion and Order and Hearing Designation Order* in this proceeding, released on November 28, 1994 (FCC 94-298) (*HDO*), looks to a determination of

“Whether American Cellular Network Corporation is a real-party-in-interest in the application of Ellis Thompson Corporation for a cellular radio system on frequency Block A in Atlantic City, New Jersey and, if so, the effect on Ellis Thompson Corporation's qualifications to be a Commission licensee.”

From the text of the *HDO*, it is evident that the Commission also contemplates the adduction of evidence concerning, and a determination of, whether Amcell at any time assumed *de facto* control over the Atlantic City cellular system. However, the *HDO* includes no issue concerning TDS, and contemplates no inquiry into the conduct of TDS.<sup>1</sup> It does not call for a determination of whether

---

<sup>1</sup> As used here, “TDS” includes TDS subsidiaries, including United States Cellular Corp. and its various subsidiaries.

BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D. C. 20554

**RECEIVED**

MAR 16 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re Application of

ELLIS THOMPSON CORPORATION

For facilities in the Domestic Public Cellular Radio  
Telecommunications Service on Frequency Block  
A in Market No. 134, Atlantic City, New Jersey.

CC Docket No. 94-136

DOCKET FILE COPY ORIGINAL

To: Honorable Joseph Chachkin  
Administrative Law Judge

OPPOSITION TO DOCUMENT PRODUCTION REQUEST

Telephone and Data Systems, Inc. (TDS) files herewith, by its attorneys, its Opposition to the Document Production request of Ellis Thompson Corporation (Thompson).

By letter of January 6, 1995, Thompson advised TDS of the documents which Thompson desires to have TDS produce in this proceeding. A copy of the request is attached. At the prehearing conference held on January 27, 1995, the Presiding Administrative Law Judge ordered the parties to which document production requests had been submitted either to produce the requested documents or to file their objections thereto by March 16, 1995.

The *Memorandum Opinion and Order and Hearing Designation Order* in this proceeding, released on November 28, 1994 (FCC 94-298) (*HDO*), looks to a determination of

"Whether American Cellular Network Corporation is a real-party-in-interest in the application of Ellis Thompson Corporation for a cellular radio system on frequency Block A in Atlantic City, New Jersey and, if so, the effect on Ellis Thompson Corporation's qualifications to be a Commission licensee."

From the text of the *HDO*, it is evident that the Commission also contemplates the adduction of evidence concerning, and a determination of, whether Amcell at any time assumed *de facto* control over the Atlantic City cellular system. However, the *HDO* includes no issue concerning TDS, and contemplates no inquiry into the conduct of TDS.<sup>1</sup> It does not call for a determination of whether

---

<sup>1</sup> As used here, "TDS" includes TDS subsidiaries, including United States Cellular Corp. and its various subsidiaries.

TDS has assumed *de facto* control of any cellular system, nor does it contemplate use of TDS as a "yardstick" for the determination of whether Amcell assumed *de facto* control over the Atlantic City cellular system or otherwise become a real-party-in-interest with respect to the Thompson application. The documents which Thompson has asked TDS to produce generally have no relevance to the designated issues, nor would their production lead to the discovery of relevant evidence. Since TDS owns in whole or in part and/or manages more than one hundred and forty cellular systems across the United States, production of the requested documents pertaining to each of those systems would be burdensome in the extreme. TDS therefore opposes the request.

Thompson's numbered requests 1-3 seek all cellular management agreements, switch-sharing agreements, and switch service agreements entered into by TDS and its subsidiaries from 1986 to date. The requested documents, pertaining to numerous cellular systems, have absolutely nothing to do with the Atlantic City system, Thompson, Amcell, or the arrangements between them or, therefore, with the designated issue in this proceeding. We therefore object to the production of any documents in those categories.

Thompson's numbered request 4 seeks income and other operating statements for the Vineland, New Jersey cellular system which TDS manages and in which TDS owns a majority interest. The requested financial information has nothing to do with the relationship between Thompson and Amcell and is therefore plainly irrelevant to the designated issue. We therefore object to the production of any documents responsive to request number 4.

Thompson numbered request 5 seeks "all income and other operating statements relating to TDS's reseller operations in Atlantic City, New Jersey." The requested financial information has nothing to do with the relationship between Thompson and Amcell and is therefore plainly irrelevant to the designated issue. We therefore object to the production of any documents responsive to request number 5.

Thompson numbered request 6 seeks all promotional materials pertaining to TDS's reseller activities in the Atlantic City cellular market. The requested information has nothing to do with the

relationship between Thompson and Amcell and is therefore plainly irrelevant to the designated issue. We therefore object to the production of any documents responsive to request number 6.

Thompson numbered request 7 seeks all "agreements, correspondence and other documents" concerning roaming arrangements between all TDS owned or managed cellular systems and the Thompson Atlantic City cellular system. TDS is producing all correspondence with Thompson and Amcell concerning Atlantic City roaming arrangements, and is also willing to produce copies of any roaming agreements with the Thompson Atlantic City system as to which Thompson advises TDS that he does not have copies.<sup>2</sup> In all other respects the request is over-broad, since no internal communications between TDS and the cellular systems which it owns or manages have any relevance to the designated issue. TDS therefore objects to the production of any documents other than those being voluntarily produced.

Thompson numbered request 8 seeks all agreements entered into by TDS and Northern Telecom, an equipment supplier, relating to the purchase of cellular telephone switches, since 1986. With one conceivable exception, the requested information has nothing to do with the relationship between Thompson and Amcell and is therefore plainly irrelevant to the designated issue. That exception involves materials which TDS previously furnished to Mr. Thompson concerning the proposed construction of the Atlantic City system which may in some way have affected his relationship with Amcell. We assume that Mr. Thompson remains in possession of any such documents, and does not desire us to produce copies. To the extent that other such documents which were not disclosed to Mr. Thompson may exist, they could not have affected his relationship with Amcell and therefore do not appear to have any relevance under the designated issue. We accordingly object to the production of such documents.

Thompson numbered request 9 seeks all budgets, plans and designs prepared by or for TDS pertaining to the construction, maintenance and operation of the Atlantic City system. Again, to the extent that materials previously furnished to Mr. Thompson are sought, we assume that Thompson

---

<sup>2</sup> Should the Wireless Telecommunications Bureau desire copies of documents which are not being produced because already in Thompson's possession, TDS will provide them upon request.

is already in possession and does not desire us to produce copies. To the extent that other such documents which were not disclosed to Mr. Thompson may exist, they do not appear to have any relevance under the designated issue. We accordingly object to the production of such documents.

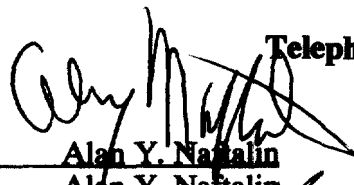
Thompson numbered request 10 seeks documents pertaining to communications between TDS and potential deponents in this proceeding. TDS has to date had no communications with potential deponents concerning this proceeding, with the exception of certain settlement discussions of which all parties are aware and concerning which we assume that the production of documents is not sought.

Thompson numbered request 11 seeks all documents which TDS intends to offer in evidence in this proceeding. TDS presently intends to offer in evidence under the designated issue the documents associated with its pre-designation pleadings filed with the Commission pertaining to the Atlantic City system. Since Thompson already has copies of those documents, we assume the production of additional copies is not desired. If during the course of discovery TDS obtains additional documents from the other parties, those documents will be equally available to ETC. At the present time, TDS has no other documents in its possession which it intends to offer in evidence.

TDS therefore asks that it be required to produce no documents other than those identified above as being produced voluntarily.

Respectfully submitted,

Telephone and Data Systems, Inc.

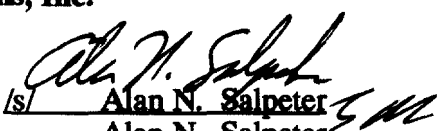
By  /s/ Alan Y. Naftalin  
Alan Y. Naftalin

By  /s/ Herbert D. Miller, Jr.  
Herbert D. Miller, Jr.

KOTEN & NAFTALIN  
SUITE 1000  
1150 CONNECTICUT AVENUE, N. W.  
WASHINGTON, D. C. 20036

Its Attorneys

March 16, 1995

By  /s/ Alan N. Salpeter  
Alan N. Salpeter

By  /s/ Michele Odorizzi  
Michele Odorizzi

By  /s/ Howard J. Roin  
Howard J. Roin

By  /s/ Demetrious G. Metropoulos  
Demetrious G. Metropoulos

MAYER, BROWN & PLATT  
190 SOUTH LA SALLE STREET  
CHICAGO, IL 60603

**FLEISCHMAN AND WALSH, L. L. P.**

ATTORNEYS AT LAW  
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

AARON I. FLEISCHMAN

FLEISCHMAN AND WALSH, P. C.

CHARLES S. WALSH

ARTHUR H. HARDING

STUART F. FELDSTEIN

RICHARD RUBIN

JEFFRY L. HARDIN

STEPHEN A. BOUCHARD

R. BRUCE BECKNER

HOWARD S. SHAPIRO

CHRISTOPHER G. WOOD

SETH A. DAVIDSON

WILLIAM F. ADLER

MATTHEW D. EMMER

JONATHAN R. SPENCER

DAVID D. BURNS

JILL KLEPPE McCLELLAND

STEVEN N. TEPLITZ

PETER T. NOONE+

ERIN R. BIRMINGHAM

REGINA R. FAMIGLIETTI

1400 SIXTEENTH STREET, N. W.  
WASHINGTON, D. C. 20036

(202) 538-7800  
FACSIMILE (202) 748-0818  
INTERNET fw\_law@ciark.net

January 6, 1995

\*NEW YORK AND NEW JERSEY BARS ONLY

**VIA TELECOPIER**

Alan Y. Naftalin, Esq.  
Koteen & Naftalin  
1150 Connecticut Avenue  
Washington, D.C. 20036

Alan N. Salpeter, Esq.  
Mayer Brown & Platt  
190 South La Salle Street  
Chicago, Illinois 60603

In re: Ellis Thompson Corporation  
Application for DPCRTS Construction Permit  
Atlantic City, NJ MSA  
File No. 14261-CL-P-134-A-86  
CC Docket No. 94-136

Gentlemen:

On behalf of Ellis Thompson Corporation ("ETC"), attached is the list of documents being requested to be produced by Telephone and Data Systems, Inc. no later than February 6, 1995 in the above-referenced proceeding. Should you have any questions concerning this document request, please contact the following counsel for ETC:

Alan Y. Naftalin  
Alan N. Salpeter  
January 6, 1995  
Page 2

Steven Larson, Esq.  
Stoll Stoll Berne & Lokting, P.C.  
209 S.W. Oak Street, 5th Floor  
Portland, Oregon 97204  
(503) 227-1600  
(503) 227-6840 (Fax)

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard Rubin".

Richard Rubin  
Counsel for Ellis Thompson  
Corporation

cc: J. Weber, Esq.  
L. Gurman, Esq.  
S. Larson, Esq.

Attachment

Ellis Thompson Corporation Document  
Requests To Telephone & Data Systems, Inc.

1. All cellular telephone system management agreements that Telephone & Data Systems, Inc., United States Cellular Corporation or their subsidiaries or affiliates (collectively referred to as "TDS") have entered into from 1986 to date.
2. All cellular telephone switch-sharing agreements that TDS has entered into from 1986 to date.
3. All cellular telephone switch service agreements that TDS has entered into from 1986 to date.
4. All income and other operating statements for the non-wireline cellular telephone system in Vineland, New Jersey from 1986 to date.
5. All income and other operating statements relating to TDS's reseller operations in Atlantic City, New Jersey.
6. All advertisements or promotional materials placed or issued by TDS in any geographic area for its reseller cellular service in the area served by the Atlantic City, New Jersey non-wireline cellular telephone system.
7. All agreements, correspondence and other documents relating to roaming arrangements between any TDS-owned or managed cellular telephone system and the Atlantic City, New Jersey non-wireline cellular telephone system.
8. All agreements entered into by TDS with Northern Telecom relating to the right or obligation to purchase cellular telephone switches from 1986 to date.
9. All budgets, plans and designs prepared for or by TDS for construction, maintenance or operation of the Atlantic City, New Jersey non-wireline cellular telephone system.
10. All documents that evidence, refer or relate to communications between TDS and any potential deponents, including but not limited to the list of deponents that accompanied TDS' December 20, 1994, informal discovery request, in the FCC proceeding relating to the Atlantic City, New Jersey non-wireline cellular telephone system.
11. All documents that you intend to introduce as evidence in any FCC proceeding relating to the Atlantic City, New Jersey non-wireline system.

## Certificate of Service

I, Judy Cooper, a secretary in the law firm of Koteen & Naftalin, hereby certify that I have this date sent copies of the foregoing to the following by hand:

Honorable Joseph Chachkin  
Administrative Law Judge  
Federal Communications Commission  
Room 226  
2000 L. Street, N.W.  
Washington, D.C. 20554

\*David A. Lokting, Esq.  
Stoll, Stoll, Berne, Fischer, Portnoy & Lokting  
209 S.W. Oak Street  
Portland, OR 97204

Joseph Paul Weber, Esq.  
Terrence E. Reideler, Esq.  
Federal Communications Commission  
Wireless Telecommunications Bureau  
Room 644  
1919 M Street, N.W.  
Washington, D.C. 20554

\* By Fax

/s/   
Judy Cooper

Stuart F. Feldstein, Esq.  
Fleischman & Walsh  
1400 Sixteenth Street, N.W.  
6th Floor  
Washington, D. C. 20036

March 16, 1995

Louis Gurman, Esq.  
Gurman, Kurtis, Blask & Freedman, Chartered  
1400 Sixteenth Street, N.W.  
Suite 500  
Washington, D.C. 20036